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No. 95-241

In The

Supreme Court of the United States

October Term, 1995

DARRYL WONG, WILLIE WONG and DELPHINE WONG,

Petitioners,

vs.

CITY COUNCIL OF THE CITY OF CARSON and PLANNING COMMISSION OF THE CITY OF CARSON,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does Petitioners' failure to utilize the procedure provided in the Carson Municipal Code for seeking modification of the conditions on the change of use of their mobilehome park render their challenge to those conditions unripe?

2. Do the conditions result in a physical taking when petitioners invited the homeowners to rent spaces in their park and petitioners can make a very considerable profit from the change of use after satisfying the conditions or can continue to use their property as a mobilehome park and earn a fair return on their investment in the park?

3. Do the conditions result in a regulatory taking or violate substantive due process when the conditions substantially advance the purpose of California Government Code Section 65863.7, which petitioners do not challenge, and petitioners have viable economic use of their property?

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On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, the City Council and Planning Commission of the City of Carson (the "City"), respectfully request that this Court deny the petition for writ of certiorari seeking review of an unpublished opinion (App. 1) of the California Court of Appeal, Second Appellate District. The California Supreme Court initially granted review. However, after the matter was fully briefed in that Court, review was dismissed as improvidently granted pursuant to Rule 29.4(c) of the California Rules of Court.

STATEMENT OF THE CASE

Petitioners (the "Wongs") own and operate a mobilehome park in the City. They want to change the use of the park so they can develop the property as a shopping center or sell it for the commercial purposes permitted by the City's zoning for the property. (App. 2, 24, 74, AR II 5186)[1] This use change requires eviction of the homeowners who rent spaces for their homes in the park. The City approved it subject to conditions requiring the Wongs to assist the homeowners in paying for the costs of relocating pursuant to California Government Code Section 65863.7.

That Section requires local jurisdictions to hold a hearing to consider the impacts of the use change on the ability of displaced homeowners to relocate their homes or obtain alternate housing and authorizes local jurisdictions to condition such use changes on the provision of reasonable relocation assistance. (Resp. App.1) The Wongs did not challenge the validity of Section 65863.7 below.

The City's relocation impact report ("RIR") ordinance, Carson Municipal Code Section 9128.21

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[1] "AR" refers to the certified Administrative Record of the City's proceedings concerning petitioners' change of use application. It consists of Part I (volumes I-III) and Part II (volumes I-XVII) and contains all the evidence presented to the City and considered by the trial court except for a few judicially noticed matters, such as the pleadings and opinion in a prior federal action between the parties which are contained in the Clerk's Transcript on Appeal ("CT").

(Resp.App. 4), establishes a hearing procedure for considering the impact report required by Section 65863.7 and determining what, if any, relocation assistance would be reasonable given the facts of a particular application. The Wongs do not challenge the facial validity of the RIR ordinance. In any event, such a challenge would be barred by the unpublished opinion in the prior federal action between the parties, Wong v. City of Carson, 91-CV-2721-LEW, which upheld the facial validity of the ordinance. (App. 74 *et seq.*)

The purpose of Section 65863.7 and the RIR ordinance is to mitigate the adverse impacts of a use change on the ability of displaced homeowners to obtain alternate housing. Because the Wongs did not challenge the validity of Section 65863.7, and cannot challenge the validity of the RIR ordinance, they cannot claim in this case that requiring them to provide reasonable relocation assistance is unconstitutional. Thus, the claim in their petition that park owners should not have to bear any of the burden of assisting homeowners to pay for relocation cannot be considered in this case.

Further, their claim that the conditions are so onerous as to preclude them from changing the use of their park is contrary to the factual finding in the decision in the prior federal case between the parties (App. 80-81) and contrary to the factual findings of the courts below in this case (App. 4-5, 17). It is also contrary to the record. Their further claims that compliance with the conditions will cost them $1.4 million and that this is more than their property is worth are also contrary to the record. The Wongs are asking this Court to reverse the factual findings made by the courts below.

Moreover, the Wongs failed to use the City's procedure for seeking modification of the conditions and have never obtained a final decision from the City concerning the application of the RIR ordinance to their property. Thus, their challenge to the conditions is not ripe.

A. FACTUAL BACKGROUND

A mobilehome park is a residential community which exists as a result of investments made both by the park owner and by the owners of the mobilehomes who rent spaces for their homes in the park. In most mobilehome parks, the aggregate investment of the homeowners in the park far exceeds the investment of the park owner. See *Casella v. City of Morgan Hill*, 230 Cal.App.3d 43, 53, 280 Cal.Rptr. 86 (1991); *Oceanside Mobilehome Park Owners v. City of Oceanside*, 157 Cal.App.3d 887, 911 & fn.9, 204 Cal.Rptr. 239 (1984); Baar, *The Right to Sell the "Im" Mobile Manufactured Home in its Rent Controlled Space in the "Im" Mobile Home Park: Valid Regulation Or Unconstitutional Taking*, 24 URBAN LAWYER, 157, 159, fn.2, Winter 1992.

In this case, the Wongs purchased their park for $1.7 million (pet.4) and the homeowners invested at least $2.7 million in their homes. ($40,000 to $70,000 per home for 69 homes, AR II 6549-52, 5027, *et seq.*, 5955, 5966-68, 6095, 6599) When the Wongs invited homeowners to rent spaces in their park they invited them to purchase a mobilehome in their park; the Wongs could not have rented spaces in their park without the investment of homeowners.

Once installed in a mobilehome park, the homes are not mobile in any practical sense because of the high cost of moving them. *Yee v. City of Escondido*, 503 U.S. 519, 118 L.Ed.2d 153, 162, 112 S.Ct. 1522 (1992); California Civil Code Section 798.55 (Resp. App. 10). There is also a shortage of vacant spaces that will accept a home being relocated (AR II 630; CT 353-374) and a home without a site has only scrap value ($1000 -$2000; AR II 5957; 24 URBAN LAWYER at 157). In recognition of the vulnerability of mobilehome owners, created by the large investment in their homes and the difficulty of moving them, California law gives homeowners the right to sell their homes in place in a park (Civil Code Sections 798.70 and 798.74, Resp. App. 11-13) and protects them from eviction (Civil Code Section 798.56). *Yee*, 118 L.Ed.2d at 163. These protections are part of the Mobilehome Residency Law, Civil Code Section 798, *et seq.*, and together give homeowners a statutory leasehold in a park.[2]

However, Civil Code Section 798.56(g) allows eviction of homeowners to accommodate a change in the use of park property. (Resp. App. 10) Because it may cost as much as $10,000-$15,000 to move a home (Baar, 24 URBAN LAWYER at 158-159) and the investment in a home will be wiped out unless the home is moved to another park, Government Code Section 65863.7 authorizes local jurisdictions to condition changes in park use on reasonable relocation assistance to the displaced homeowners. The Administrative Record is replete with evidence of the homeowners' financial inability to relocate their homes or obtain alternate housing without assistance. (AR II 4039,

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[2] All statutory references are to California Codes.

4863-65, 4852-4854, 4870, 3989-90, 6083)[3] Yet it was the investment of these homeowners which made it possible for the Wongs to earn a profit from their mobilehome park.

The Wongs valued their property at $7 million in the impact report they filed with the City. (AR II 42) At no time during the proceedings before the City did they ever assert that the relocation assistance proposed by the City would make the use change financially infeasible. Rather, they claimed they should not have to pay any homeowner more than $4,000 even if the cost of moving a home was greater than that amount (AR II 678) and even when a relocation space cannot be found for a home. They also argued they should not be required to purchase the homes in the park. (AR II 4444).

The City did not require the Wongs to purchase any of the homes in the park, but it did require that some homeowners receive assistance greater than $4,000. The conditions of approval require that the Wongs pay each homeowner the cost of tearing down, moving and setting up their home at another mobilehome park ($500 to $7700) and the cost of moving their furnishings and other personal belongings ($700), as established by moving estimates for each individual home and cost estimates by furniture movers. (App. 34, 44-47) The Wongs did not

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[3] 26% of the households in the census tract in which the Wongs' park is located have incomes designated by the Department of Housing and Urban Development as very low and 41% fall within the designation for low income households. U.S Census Bureau, Summary Tape File 3A, 1990 Census and HUD Income Limit Tables.

challenge these conditions in the court proceedings below.

Because it was not known whether all the homes could be relocated to a space in another park, the conditions also contain a provision called the "last resort" benefit.[4] This benefit applies *only if* a relocation space cannot be found within 50 miles from the Wongs' park during the six month period allowed for the removal of the homes from the park under Civil Code Section 798.56(g)(2). (App. 53, Resp.App. 10) It is only this condition which the Wongs challenged below.

Of the 171 households in the park at the time of the City's hearings, only 69 were eligible for the last resort benefit *if* a relocation space could not be found.[5] This benefit consists of a lump sum payment to assist any such homeowners, who would otherwise lose the entire investment in their homes, in paying for the costs of relocating. The payment is based on consideration of the cost of moving the personal belongings of each individual household, the depreciated replacement cost of each home ($7,000-$35,000, App. 57-58), and move-in costs at a new location, such as first and last months' rent, security

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[4] A study by the City shows there were a substantial number of available spaces, but that availability varies from month to month. (CT 357-374)

[5] Some of the "homes" in the park are "recreational vehicles" rather than "mobilehomes." Only homes which are "mobilehomes," as defined by Civil Code Section 798.3, and are the principal residence of the owner, are eligible for this benefit. Some mobilehome owners were not entitled to any benefits whatsoever because they did not reside in their home. (App. 37-41)

deposits and higher rents ($1,950, App. 55-59). This benefit is far less than the purchase price ($40,000 to $70,000, AR II 5010, 6549-52, 5727, *et seq.*, 5955, 5966, 6995, 6599) of the homes.

The actual costs of relocation for the homeowners whose homes cannot be relocated will be far greater than the last resort benefit. Those homeowners who have paid off the loans made to purchase their homes will have to incur debt to purchase a mobilehome in another park and pay higher rent at that park. If the park were not closing those homeowners could have recouped their investment through sale of their homes and could also have borrowed against the equity in their homes. The many homeowners who still have outstanding debt for the purchase of their homes will also be faced with defaults on their loans.[6]

The Wongs base their claim that it will cost $1.4 million to comply with the conditions of approval on the incorrect assumption that they will have to pay the last resort benefit to all of the 69 originally eligible homeowners. However, it will be possible to relocate many of the homes and several of these homeowners left the park without relocation assistance.[7] Because the number of available relocation spaces varies, it is not possible to

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[6] 52% of the homeowners have outstanding debt on their homes. (AR II 4039) The possibility of a deficiency judgment against the homeowners depends on the terms of a loan and the date at which it was executed. Civil Code Section 2938.8.

[7] There were only 57 eligible homes at the time of briefing in the Court of Appeal. There are now far fewer homes remaining in the park.

know how many homeowners might ultimately be entitled to the last resort benefit. The only certainty is that the cost will be much less than the $1.4 million claimed by the Wongs.

Even if it would cost the Wongs $1.4 million, they would still profit by $3.9 million just by selling the park once the homes are removed. ($7 million value claimed in the Wongs' impact report less their $1.9 million purchase price less $1.4 million in relocation payments.) At no time during the City's hearings did the Wongs ever claim that the property was worth less than $7 million.

During the trial court proceedings they attempted, unsuccessfully, to supplement the evidence in the Administrative Record with a declaration stating it was worth $5 million rather than $7 million. (CT 259, App. 16) Even if there were admissible evidence of the $5 million value, the Wongs would still profit by $1.9 million from the change of use even if they had to pay $1.4 million to relocate the homeowners.

There is no evidence in the Administrative Record, and none was offered in the courts below to support the Wongs' claim, made for the first time in this Court, that the conditions would cost more than their property is worth. In support of this claim, the Wongs offer figures and estimates (pet. fn. 6) purporting to show that their property is worth only $812,000 to $1.2 million. This value estimate is derived by capitalizing the park's alleged rental income, but there is no evidence of the park's income in the record. Further, this newly alleged value is based on use of the property as a mobilehome

park when the Wongs plan to develop it or sell it for the commercial uses permitted by the zoning on the property.

Although the Wongs claim that continued use of their property as a mobilehome park is not viable because of the City's mobilehome park rent control ordinance, they do not claim they have been deprived of a fair return on their investment by application of the ordinance. The Wongs purchased the park after rent control was in place and a rent increase has been granted to them every time they applied for one. They have never challenged the adequacy of any of those rent increases and they have not sought any rent increase since 1986. (AR I 3)[8] Thus, any claim that application of the ordinance has made continued operation of the park financially unviable would not be ripe or valid. *Yee, supra,* 153 L.Ed.2d at 166.

B. THE ADMINISTRATIVE PROCEEDINGS BELOW AND THE OPINIONS IN PRIOR RELATED ACTIONS BETWEEN THE PARTIES

The Wongs filed an incomplete application to change the use of their park in 1988. (AR I tab 1) The City informed the Wongs that their application could not be

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[8] The rents have been controlled since May of 1979 and the Wongs purchased in June of 1979. (AR I 3) The provisions of the Ordinance are set forth in *Carson Mobilehome Park Owners' Assn. v. City of Carson,* 35 Cal.3d 184, 197 Cal.Rptr. 184, 672 P.2d 1297 (1983), which upheld the validity of the ordinance. All increases must be approved by the City's rental review board (*id.*, 35 Cal.3d at 188, 191) and most parks seek an increase once every year or two years. Code of Civil Procedure Section 1094.5 provides a speedy remedy for challenging rent increase decisions.

set for hearing until all relevant information required by the RIR ordinance was provided. The Wongs filed an action in the Los Angeles County Superior Court, Case No. C 707227, seeking a writ of mandate compelling the City to set their application for hearing without the missing information. (AR I tab 57) They alleged that the RIR ordinance was facially invalid because it conflicted with Government Code Section 65863.7 (AR I 568, 571-572) and its requirements were facially invalid. (AR I 570-574) After a trial on the merits, judgment was entered denying their petition on June 8, 1989. (App. 73, AR I 644) The Wongs did not appeal that judgment.

On August 1, 1989, the Wongs filed a revised but still incomplete use change application with the City. (App. 25-26, AR II 653) They did not complete the application until September 4, 1990. (App. 26, AR II tab 74) The application was then heard and approved subject to conditions by the City Council on March 19, 1991. (App. 28 & 66) This was just six months after the Wongs filed a complete application.[9]

After the City approved the use change, the Wongs claimed that the conditions imposed a financial hardship. (AR II tab 184) Although the Wongs were informed that they could seek modification of the conditions on that ground (AR II tabs 181, and 183), they did not do so. Instead, they filed an action in the United States District

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[9] The delay complained of in the petition was caused by the Wongs' prior state court action and subsequent delay in filing a complete application. Further, the Wongs were so dilatory in their prosecution of this case that the trial court considered dismissing it. (App. 14-15)

Court for the Central District of California, Case No. 91-2721-LEW, challenging the RIR Ordinance and the conditions (the "prior federal case").

The unpublished opinion in that case held that the ordinance did not violate the Thirteenth Amendment (App. 80-81), did not violate procedural due process (App. 80-82) and did not effect a physical or regulatory taking of the Wongs' property (App. 78-79)[10] The opinion also held that the conditions did not prevent the Wongs from going out of business and did not deprive them of procedural due process. (App. 81-82) Finally, it held that their taking challenges to the conditions was not ripe because the Wongs had not used available state court compensation remedies. (App. 79-80)

The Wongs did not appeal this decision and thus are barred by res judicata from challenging the facial validity of the ordinance. (App. 3, fn.3) The decision also bars them from claiming the conditions prevent them from going out of business or violate procedural due process. (App. 3, fn.3)

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[10] The petition suggests that the facial taking claims were not decided on their merits because the opinion also discusses the statute of limitations. However, the claims were clearly denied on their merits. (App. 77-78)

REASONS FOR DENYING THE WRIT

A. PETITIONERS' CLAIMS ARE NOT RIPE

The Wongs now make the unsupported claim that compliance with the conditions would cost them more than their property is worth and make it financially infeasible to change the use of their park. They never made these claims during the City's proceedings on their application. The evidence before the City was that the park was worth $7 million. (AR II 42) Based on that evidence the Wongs would profit by at least $3.9 million just by selling their property after relocating the homeowners. (See Factual Background above) Thus, there was no reason for the City to believe the relocation assistance required as a condition of approval would impose a financial hardship or make the change of use financially infeasible.

It was only after the conditions had been adopted that the Wongs claimed that they did not have the resources to comply with the conditions, asserting that they had lost the anchor tenants on which they premised their change of use plans. (AR II tab 184) At that time, the City told the Wongs that economic hardship was a ground for modification of the conditions under RIR Section 9128.21(F). (AR II tab 185) That Section provides, in pertinent part, as follows:

> "A modification of the RIR [approval] may be granted upon a finding that the approved RIR created a substantial hardship for the owner and that any such modification will not unreasonably prejudice the interests of the tenants." (Resp.App. 9)

However, the Wongs did not file a modification application and so failed to get a final decision from the City concerning how the RIR Ordinance will be applied to their property. Thus, their claims are not ripe. *Williamson County Planning Commission v. Hamilton Bank*, 473 U.S. 172, 186-87, 87 L.Ed.2d 126, 139, 105 S. Ct. 3108 (1985).[11]

There is no basis in this case for any exception to the requirement of obtaining a final decision concerning application of the ordinance. The prior federal case between the parties rejected the Wongs' claim that the modification process violates procedural due process. (App. 81-82) There is no basis for claiming that it would have been futile to seek modification. Section 9128.21(F) requires the City to make a factual inquiry concerning the hardship to the Wongs and whether the conditions can be modified without unreasonable prejudice to the homeowner/tenants. It is not possible to know what the outcome of such an inquiry would be because the relevant evidence was never presented to the City.

B. THE RECORD IN THIS CASE DOES NOT PRESENT THE ISSUES CLAIMED BY PETITIONERS

The Wongs' taking and substantive due process challenge to the conditions are premised on their claims that they cannot change the use of their park, that they have

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[11] The trial court rejected this claim without explanation and the Court of Appeal did not address it as it upheld the City's actions on other grounds. However, the City preserved this issue in the Court of Appeal and it is a jurisdictional issue which cannot be waived.

been required to purchase the mobilehomes in their park and that their property is worth less than what it will cost them to comply with the conditions. However, the decisions in the prior federal case (App. 80-81) and the courts below in this case found that the conditions do not prevent the Wongs from changing the use of their property (App.4-5, 17). The courts below also found that the conditions do not require the Wongs to purchase the mobilehomes in the park. (App. 6, 17) They further found that the conditions do not exceed the "reasonable costs of relocation." (App. 6, 17)

There is no dispute as to the applicable law in this case. The issue in this case is not whether the Wongs may change the use of their park; they may clearly do so and will profit handsomely from the change of use after complying with the conditions of approval. (See Factual Background above) The Wongs are asking this Court to reverse the factual findings made by the courts below.

C. THE PETITION ASSERTS "FACTS" NOT IN THE RECORD AND "FACTS" THAT ARE CONTRARY TO THE RECORD

The petition sets forth figures and calculations purporting to show that the Wongs' property is worth only $812,000 to $1.2 million. (Pet. p.6-7 & fn.6) These alleged values are the basis of the Wongs' claim that the conditions make change of use financially infeasible. However, there is no evidence in the Administrative Record or Clerk's Transcript below, to support this claim or the

calculations on which it is based.[12] In fact, the value of the property now claimed is contrary to the claims made by the Wongs during the City's hearings and in the trial court.

During hearings before the City, the Wongs claimed the park was worth $7 million. (AR II 42)[13] In the trial court, the Wongs offered a declaration concerning a proposed sale of the park to show that it was worth $5 million rather than $7 million. (CT 259) Thus, the Wongs' unsupported claim in this Court that the value of their property is only $812,000 to $1.2 million is inconsistent with the evidence before the City and inconsistent with the evidence the Wongs offered in the trial court. Moreover, they are now asserting their property should be valued as a mobilehome park when they seek a change of use so it can be developed as a shopping center, apartments and condominiums, as permitted by the City's zoning.

The Wongs' claim in this Court that they had no plan to sell or use their property for commercial purposes is contrary to: (1) the impact report they filed with the City (AR II 656); (2) their statements after approval of the use change that they had lost the anchor tenant for their

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[12] The calculations in footnote 6 of the petition are based on capitalization of alleged rental income. There is no evidence of that income in the record.

[13] The Wongs' claim made for the first time in this Court (pet. fn.3), that $7 million was the value the park would have had if sold to the homeowners for continued use as a mobilehome park and that it is worth far less for commercial purposes is not based on any evidence presented below.

proposed shopping center (AR II tab 184); (3) the declaration they offered in the trial court (CT 259); (4) the factual finding of the district court in the prior federal case (App. 74); and (5) the findings of the courts below (App. 2).

When the Wongs' claim that the property is worth only $812,000 to $1.9 million is disregarded, as it should be given the record, there is no basis whatsoever for the Wongs' claim that the compliance with the conditions make a change of use financially infeasible. As set forth in the Factual Background above, the Wongs will profit by at least $3.9 million just by selling their property if, as they claimed during the City's hearings, it is worth $7 million. Even if it is worth only $5 million, as they tried to claim in the trial court, they will still profit from the change of use by $1.9 million.[14]

Further, the Wongs have a choice between changing the use of the park and continuing to operate it as a mobilehome park. Given the record in this case, the Wongs cannot claim that the City's rent control ordinance has deprived them of a fair return on their investment. They have received a rent increase every time they have applied for one and have never challenged any of those increases as insufficient to provide a fair return. Having failed to do so and having failed to seek any rent increase since 1986 (AR I 3), they cannot now claim application of the ordinance has deprived them of viable economic use. *Yee, supra* 118 L.Ed.2d at 165.

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[14] The claim that they must give back the profits from the past operation of the park is unfounded. The Wongs have had and enjoyed that profit and will profit further from the use change.

D. THE PRIOR FEDERAL ACTION AND PETITIONERS' FAILURE TO CHALLENGE CALIFORNIA GOVERNMENT CODE SECTION 65863.7 BAR ANY CLAIM THAT REQUIRING REASONABLE RELOCATION ASSISTANCE TO DISPLACED HOMEOWNERS DOES NOT SUBSTANTIALLY ADVANCE A LEGITIMATE PUBLIC PURPOSE

The Wongs cite a Washington State Supreme Court case, *Guimont v. Clarke*, 854 P.2d 1, 121 Wash.2d 566 (1993) and a Florida appellate court decision, *Aspen-Tarpon Springs L.P. v. Stuart*, 635 So.2d 61 (Fla.App.1994), to claim that requiring park owners to pay any relocation assistance whatsoever violates substantive due process and constitutes a taking. Based on these cases, the Wongs argue that it is not park owners who are responsible for the lack of affordable housing, the shortage of mobilehome spaces or poverty and that they should not, therefore, have to bear any of the burden of relocating displaced homeowners.

This is an attack on the legitimacy of the purpose of Government Code Section 65863.7 and the RIR ordinance, which authorize the City to condition a use change on providing reasonable relocation assistance. Such an attack cannot be raised in this action for two reasons. First, the Wongs did not challenge Government Code Section 65863.7 below and do not claim to challenge it now. Second, as set forth above, the decision in the prior federal case bars them from challenging the validity of the City's RIR ordinance. Therefore, the only issue in this case is whether the conditions substantially advance the

purpose of Section 65863.7 and the RIR Ordinance. (App.3, fn. 3) As set forth below, they clearly do.

E. THE DECISION BELOW IS CLEARLY CORRECT

1. The Conditions Do Not Violate Substantive Due Process Or Result In A Regulatory Taking

A regulation, whether set forth in legislation, or the conditions on a land use permit, is valid under the substantive due process clause if it is rationally related to a legitimate governmental purpose. *Pennell v. City of San Jose*, 485 U.S. 1, 11-12, 99 L.Ed.2d 1, 14-15, 108 S.Ct. 849 (1986). Such legislation and conditions are valid under the takings clause so long as they substantially advance a legitimate governmental purpose and do not deny viable, economic use of property. *Dolan v. City of Tigard*, 512 U.S. ___, 129 L.Ed.2d 304, 316, 114 S.Ct. 2309 (1994); *Agins v. City of Tigard*, 447 U.S. 255, 260, 65 L.Ed.2d 106, 100 S.Ct. 2138 (1980). Further, *Dolan* explains that there should be a rough proportionality between any conditions imposed and the impact of the proposed land use. *Dolan, supra*, 129 L.Ed.2d at 320.[15]

The homeowners, whose investment in the park made it possible for the Wongs to operate the park, will lose their investment in their homes as a result of the use

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[15] There has been some debate concerning whether the "rough proportionality" test of *Dolan* applies in cases where no dedication or conveyance of title to land is involved. However, in this case, the detailed evidence of the impacts of the change of use and careful tailoring of the conditions to mitigate those impacts clearly satisfy the *Dolan* test.

change unless they are relocated. Requiring park owners to provide assistance in relocating the displaced homeowners serves a legitimate public purpose. *Pennell, supra.* Moreover, as set forth above, the legitimacy of this purpose cannot be challenged in this case.

The 20 volume Administrative Record contains detailed evidence of the costs of relocating each home. It also establishes that a homeowner whose home cannot be relocated will lose the investment in the home. The conditions do not require the Wongs to compensate the homeowners for all these costs. Instead, they simply reduce the costs the homeowners will incur as a result of the change of use. Thus, those whose homes can be relocated will be paid for the cost of moving the home and moving their furnishings. But the conditions will not compensate them for move-in costs (first and last months' rent, security deposits, upgrades to comply with changes in the California Codes since the homes were set up in the Wongs' park) or lodging during the time the home is being torn down, moved and set up again.

Those homeowners for whom a relocation space cannot be found will receive a lump sum payment which is equal to approximately one-half the fair market value the home would have if the use of the park were not being changed. That fair market value is what these homeowners will have to pay to purchase a mobilehome in another park, which is the least expensive replacement housing they could purchase. Thus, those homeowners will have to incur debt or otherwise make up the difference between the relocation payment and the price of a mobilehome in another park. Those who have outstanding debt on their homes have the additional problems of

dealing with their lenders and face possible deficiency judgments.[16]

Requiring the Wongs to pay a portion of the costs that will be incurred by the homeowners does not impose an undue burden on the Wongs and does not "go too far." The Wongs have profited over the years from operation of the park and will profit from the use change. The homeowners, whose investment made operation of the park profitable, will suffer a loss even with the assistance required.

In these circumstances, there can be no doubt that the conditions substantially advance the purpose of Government Code Section 65863.7 and the RIR Ordinance and do not result in a regulatory taking. For that reason they clearly meet the less stringent test applicable to the Wongs' claim that the conditions violate substantive due process.

2. The Conditions Do Not Effect A Physical Taking

The Wongs' claim that there has been a physical taking is based on the allegation that the conditions preclude them from changing the use of their park. However, as fully set forth above, they may change the use of their park upon the payment of relocation assistance and make a considerable profit after complying with conditions. Thus, as found in the prior federal case, the trial court and the Court of Appeal (App. 4, fn.4; 13, 17, 80-81), the

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[16] See footnote 6, *supra*.

conditions do not prevent them from changing the use of the park.

Nor can a physical taking arise from the fact that the homeowners are currently occupying their park. That occupation results from the Wongs' invitation to the homeowners to rent spaces in their park rather than from City regulation. Thus, it cannot be the basis for a physical taking claim. *Yee, supra,* 118 L.Ed.2d at 165-166.

F. THE ISSUES IN THIS CASE ARE LIMITED BY ITS UNIQUE FACTS AND THOSE FACTS DO NOT RAISE ANY IMPORTANT ISSUE APPROPRIATE FOR DECISION BY THIS COURT

The California Court of Appeal did not consider this case sufficiently important to warrant publication. Although, the California Supreme Court initially granted review of the decision, it subsequently dismissed review as having been improvidently granted. (App. 71; See Rule 29.4(c) of the California Rules of Court) This dismissal was after the issues had been fully briefed in that Court.

No new or important issues of law are presented by this case. There is no conflict between the decision below and the decisions of this Court or of the Circuit Courts of Appeal. The decisions of this Court have already determined the tests applicable to whether the conditions on a land use permit violate substantive due process or result in a taking. The question whether those tests were properly applied in this case depends on the correctness of the factual findings of the courts below rather than on disputes concerning the applicable law.

Both the trial court and court of appeal rejected the Wongs' factual contentions as contrary to the evidence. In essence, the Wongs are asking this Court to review the decisions of those courts to correct factual error. That is not an appropriate basis for review by this Court. This is particularly true when, as in this case, it can readily be seen that the findings of the courts below were correct.

CONCLUSION

The City respectfully requests that this Court deny the Wongs' petition for writ of certiorari because this case presents no issue appropriate for this Court's review and because the holdings of the lower courts were not in error.

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Respectfully submitted,

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CALIFORNIA GOVERNMENT CODE SECTIONS 65863.7 AND 65863.8

(a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or park resident may request, and shall have a

right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to * * * Section * * * *66016* to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and

is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

§ 65863.8. Mobilehome park; conversion to other use; notice to residents and owners of mobilehomes.

A local agency to which application has been made for the conversion of a mobilehome park to another use shall, at least 30 days prior to a hearing or any other action on the application, inform the applicant in writing of the provisions of Section 798.56 of the Civil Code and all applicable local requirements which impose upon the applicant a duty to notify residents and mobilehome owners of the mobilehome park of the proposed change in use, and shall specify therein the manner in which the applicant shall verify that residents and mobilehome owners of the mobilehome park have been notified of the proposed change in use. Neither a hearing on the application, nor any other action thereon, shall be taken by the local agency before the applicant has satisfactorily verified that the residents and mobilehome owners have been so notified, in the manner prescribed by law or local regulation.

EXCERPTS FROM THE CARSON MUNICIPAL CODE SECTION 9128.21, THE RELOCATION IMPACT REPORT ORDINANCE

Section 9128.21 Relocation Impact Report (RIR)

For the purposes of this Section, any closure of a mobile home park or trailer park or any part thereof or any change of the park's status to a vacant use shall be deemed to be a conversion of the park.

Prior to the conversion of a mobilehome park or trailer park or any part thereof to any other use or to a vacant use, the person or entity proposing such conversion (hereinafter "the owner") shall file and obtain approval of a relocation impact report (RIR) in accordance with the provisions contained in this Section.

A. Time for Filing RIR

An RIR shall be filed by the owner and approved by the Commission prior to the giving of the written notice of change in use of a mobilehome park or trailer park or any portion thereof required by Section 798.56(f) of the California Civil Code. The RIR shall constitute an application for a permit requesting a change of use within the meaning of Section 798.56(f)(2) of the California Civil Code.

If an owner files a tentative tract or parcel map to a subdivision to be created upon the conversion of a mobilehome park or trailer park to another use prior to giving the written notice under Section 798.56(f) of the California Civil Code, then the RIR shall be filed concurrently with the filing of the map.

If the written notice of change in use has been given to the tenants prior to the adoption of this

Section, the RIR shall be submitted within 30 days of the effective date of this Section.

B. Content of RIR

The RIR shall contain the following:

1. A description of the proposed new use.
2. A time table for conversion of the park.
3. A legal description of the park.
4. The number of spaces in the park, length of occupancy by the current occupant of each space, and current rental rate for each space.
5. The date of manufacture and size of each coach.
6. The appraised market and on-site value of each of the coaches in the park. The appraiser is to be selected by the City, and the cost is to be borne by the applicant.
7. The number of residents per space in the park, the number under 16 years of age, the number 60 years of age or over, and the number who are handicapped.
8. The name and mailing address of each tenant.
9. A list of known available spaces in the South Bay-Long Beach-Orange County area, including any written commitments from mobilehome park owners willing to accept displaced tenants.

10. Estimates from 2 moving companies as to the per mile cost of moving coaches of various sizes, including tear-down and set-up of coaches.

11. Proposed measures to mitigate the adverse impacts of the conversion upon the park residents.

12. Information whether tenants have been offered the option of a long-term lease of the land and purchase of the improvements if the park is to be sold.

C. Hearing and Notice

Upon filing of an RIR, the Director shall examine the same and advise the owner within 30 days after receipt thereof whether it is complete. When a complete RIR has been filed it shall be accepted by the Director, and the Director shall set a time, date and place for review of the RIR by the Commission not later than 30 days after the date of acceptance. The Director shall mail a copy of the RIR to all tenants of the mobilehome park or trailer park and shall give notice by first class mail or personal delivery to the owner and the tenants of the date, time and place of the hearing at least 15 days prior thereto. The notice shall also contain a general explanation of the matters to be considered by the Commission. The Director may give such additional notice as the Commission deems necessary or desirable. The hearing shall be conducted and the decision made in accordance with Sections 9173.23, 9173.31, 9173.32 and 9173.33 of this Chapter.

D. Commission Findings and Decision

Upon review of the RIR and consideration of the written and oral evidence received at the hearing, the Commission shall, by resolution, render its decision. The Commission shall approve the RIR if it is able to make an affirmative finding that reasonable measures have been provided in an effort to mitigate the adverse impact of the conversion on the ability of the park residents to be displaced to find alternative housing. If the Commission does not make this finding and is unable to impose reasonable measures to mitigate the adverse impact, the Commission may disapprove the RIR. No other permit or approval shall be granted in furtherance of the proposed conversion, and no change of use shall occur until and unless an RIR has been approved.

In approving an RIR, the Commission may impose reasonable measures to mitigate adverse impacts created by the conversion, which may include, but not be limited to, any of the following:

1. Provision for payment of the cost or partial cost of physically moving the coach to a new site, including tear-down and set-up of coaches.

2. For those tenants who move to apartments, provision of the first and last month's rent, plus security deposit, not to exceed the Fair Market Rents for new construction and substantial rehabilitation for the Los Angeles area as established by the U.S. Department of Housing and Urban Development.

Mobilehome households of 1 or 2 persons may be compensated based on a one-bedroom apartment; households of 3 or more mobilehome tenants may be compensated based on a two-bedroom rental.

3. Provision of a replacement space within a 50 mile radius of the mobilehome park or trailer park.

4. Postponement of the conversion for a reasonable period of time.

5. A requirement to purchase the coaches at fair market values, determined by an independent appraiser based on either the value of the coach sold in place, including improvements, yards and the like, or the market value.

6. A provision for setting aside a certain number of units if the park is to be converted to another residential use.

7. A longer notification period allowing the owner to pay a smaller portion of the relocation costs; amount of financial relocation to be determined by amount of prior notification given.

8. Owner to pay the difference in rent between the new and old park for a specified period of time.

E. Effective Date and Appeal

The decision of the planning Commission shall become effective and final 15 days after the date of its action unless an appeal is filed in accordance with Section 9173.4. An appeal shall be

considered by the Council as provided in Section 9173.4.

F. Subsequent Modification of Mitigating Measures

After an RIR has been approved, modification of the mitigation measures imposed, including additions or deletions, may be considered upon filing of a written application by the owner or his authorized representative. Any such application for modification shall be subject to the notice and hearing procedures set forth in Paragraph C of this Section. The decision and any appeal in connection with a modification request shall take place as with the initial approval. A modification of the RIR may be granted upon a finding that the approved RIR or a change of circumstances has created a substantial hardship for the owner and that any such modification will not unreasonably prejudice the interests of the tenants.

EXCERPTS FROM THE CALIFORNIA MOBILEHOME RESIDENCY LAW, CALIFORNIA CIVIL CODE SECTION 798, *ET SEQ.*

§ 798.55. Legislative findings; Notice of termination by management. (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

§ 798.56. Reasons for termination of tenancy. A tenancy shall be terminated by the management only for one or more of the following reasons:

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more

prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivision (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section.

§ 798.70. Advertisement for sale, exchange or rent. A homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person, may

advertise the sale or exchange of his or her mobilehome, or, if not prohibited by the terms of an agreement with the management, may advertise the rental of his or her mobilehome, by displaying a sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome facing the street, or by a sign in front of the mobilehome facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. Any such person also may display a sign conforming to these requirements indicating that the mobilehome is on display for an "open house," unless the park rules prohibit the display of an open house sign. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent and the sign face shall not exceed 24 inches in width and 36 inches in height. Signs posted in front of a mobilehome pursuant to this section may be of an H-frame or A-frame design with the sign face perpendicular to, but not extending into, the street. Homeowners may attach to the sign or their mobilehome tubes or holders for leaflets which provide information on the mobilehome for sale, exchange, or rent.

§ 798.74. Approval of purchaser by management; Requirement of specification of information; Notification of acceptance or rejection of application. (a) The management may require the right of prior approval of a purchaser of a mobilehome that will remain in the park and that the selling homeowner or his or her agent give notice of the sale to the management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the

park unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park. In determining whether the purchaser has the financial ability to pay the rent and charges of the park, the management shall not require the purchaser to submit copies of any personal income tax returns in order to obtain approval for residency in the park. However, management may require the purchaser to document the amount and source of his or her gross monthly income or means of financial support. Upon request of any prospective homeowner who proposes to purchase a mobilehome that will remain in the park, management shall inform that person of the information management will require in order to determine if the person will be acceptable as a homeowner in the park.

Within 15 business days of receiving all of the information requested from the prospective homeowner, the management shall notify the seller and the prospective homeowner, in writing, of either acceptance or rejection of the application, and the reason if rejected. During this 15-day period the prospective homeowner shall comply with the management's request, if any, for a personal interview. If the approval of a prospective homeowner is withheld for any reason other than those stated in this article, the management or owner may be held liable for all damages proximately resulting therefrom.

§ 798.80. (Operative until January 1, 1995) Notice to resident organization that mobilehome park is for sale. (a) Not less than 30 days nor more than one year prior to an owner of a mobilehome park entering into a written listing agreement with a licensed real estate broker, as

defined in Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, for the sale of the park, or offering to sell the park to any party, the owner shall provide written notice of his or her intention to sell the mobilehome park by first-class mail or by personal delivery to the president, secretary, and treasurer of any resident organization formed by homeowners in the mobilehome park as a nonprofit corporation, pursuant to Section 23701v of the Revenue and Taxation Code, stock cooperative corporation, or other entity for purposes of converting the mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the mobilehome park. An offer to sell a park shall not be construed as an offer under this subdivision unless it is initiated by the park owner or agent.